

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF JAMES A. WILSON § No. 658, 2009
FOR A WRIT OF MANDAMUS §

Submitted: November 18, 2009
Decided: December 1, 2009

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 1st day of December 2009, it appears to the Court that:

(1) The petitioner, James A. Wilson, seeks to invoke this Court’s original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to, in turn, compel the Department of Correction (“DOC”) to release him because he has completed his sentence in Criminal Identification Number 9912006359. The State of Delaware has filed an answer requesting that Wilson’s petition be dismissed. We find that Wilson’s petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be dismissed.

(2) The record reflects that, in 1985, Wilson was convicted of Robbery in the First Degree and related offenses and was sentenced to a term of incarceration. In 1999, while on parole, Wilson was convicted of speeding and other offenses. In addition, in 1999 and 2000, Wilson was

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

arrested on a number of new felony charges. After a parole violation hearing, Wilson was found to have committed a parole violation, his parole and good time were revoked, and he was sentenced to serve the remainder of his 1985 sentence. In July 2000, after serving a portion of his sentence on the parole violation, Wilson was sentenced on his new convictions of Harassment and Possession of a Firearm By a Person Prohibited in Cr. ID No. 9911012318. In September 2001, he was sentenced on his new convictions of Trafficking in Cocaine and four other drug offenses in Cr. ID No. 9912006359. Wilson's sentences on those convictions twice interrupted his sentence on the parole violation.

(3) The Superior Court docket sheet reflects that, in December 2004, Wilson began filing a series of motions requesting modification of his sentence in Cr. ID No. 9912006359. The most recent motions, in essence, ask the Superior Court to compel the DOC to recognize that his sentence in Cr. ID No. 9912006359 has been served and to release him from incarceration. In response to a motion Wilson filed on August 11, 2009, the Superior Court contacted the DOC and, on August 28, 2009, sent Wilson a copy of the DOC's response, with which the Superior Court stated it agreed. The response stated that, while Wilson is correct that his sentence in Cr. ID

No. 9912006359 is complete, he remains incarcerated because he has not completed the remainder of his sentence on his parole violation.

(4) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the trial court has arbitrarily failed or refused to perform its duty.³

(5) There is no basis for the issuance of a writ of mandamus in this case. The record reflects that Wilson properly remains incarcerated because he is serving the remainder of his sentence for a parole violation. As such, Wilson has failed to demonstrate that the Superior Court has arbitrarily failed or refused to perform its duty to compel the DOC to release him from incarceration.

NOW, THEREFORE, IT IS ORDERED that Wilson's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Id.*